IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL WRIT PETITION NO.2659 OF 2006

Shri Sadguru Sales/ Proprietor
Shri Arun Raosaheb Inamdar ..Petitioner.
Vs.
The State of Maharashtra & Anr. ..Respondents.

Mr.Sugandh Deshmukh, adv. for the Petitioner.
Ms.S.V.Gajare, APP for the Respondent No.1.
Mr.Sagar Kasare for Mr.S.K.Shinde for the Respondent No.2.

CORAM : J.H.BHATIA, J.
DATE : JUNE 25, 2007.

ORAL JUDGMENT:

1. Rule.

2. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing immediately.

3. Heard Mr.Deshmukh the learned counsel for the petitioner and Mr.Kasare the learned counsel for the respondent no.2. Perused the copies of the relevant documents.

4. To state in brief, the present petitioner filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent no.2 on 15-12-2005. In complaint, it was alleged that the accused had issued a cheque on 3-10-2005 in favour of

the petitioner/complainant for payment of Rs.3,62,171/- in discharge of part of the existing debt or liability. The cheque was issued against ICICI Bank, Thane. The cheque was presented to the bank for encashment and it was returned to the complainant on 20-10-2005 with a memo of the bank showing that the cheque was dishonoured for want of sufficient funds. The petitioner issued a notice to the respondent no.2 by Registered Post A.D. on 7-11-2005 and the notice was actually received by the respondent no.2 on 11-11-2005. However, he failed to make the payment within stipulated period i.e. upto 26-11-2005. The complaint was filed on 15-12-2005. After recording of the verification statement of the complainant/petitioner, J.M.F.C., Karad dismissed the complaint summarily holding that the bank had returned the cheque with memo on 20-10-2005 while the notice was issued by the complainant to the accused on 3-12-2005 which is not within stipulated period as prescribed by the law. Against this order, the complainant filed Revision Application No.33 of 2005, which was also dismissed by the Additional Sessions Judge, Karad. However, the reason given by the Additional Sessions Judge for dismissal of the Revision Application was that the notice was received by the accused on 11-11-2005 and therefore, the period of limitation for filing the complaint was till 11-12-2005 and as it was actually filed on 15-12-2005, it was barred by the limitation.

In this petition, the petitioner contends that both the Courts below committed error of facts as well as law while holding that the complaint was barred by limitation.

5. The relevant dates are mentioned on the last page of the complaint which make it clear that the cheque dated 3-10-2005 was presented to the bank for encashment and it was returned to the complainant on 20-10-2005 with a memo of the bank showing that the cheque was dishonoured for want of sufficient funds. Notice was issued on 7-11-2005 by Register Post A.D. and it was received by the accused on 11-11-2005. In view of clause (b) of the proviso to Section 138 Negotiable Instruments Act, after the amendment with effect from 6-2-2003, the payee or the holder in due course of the cheque, as the case may be, has to make a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. It may be noted that prior to the said amendment, the period for issuance of notice was 15 days. However, as the events leading to the present complaint took place in October to December, 2005, amended provision will be applicable and the notice could be served within 30 days from the date of intimation that the cheque was dishonoured for want of

sufficient funds. As the intimation was received by the complainant on 20th October, 2005, he could issue notice within 30 days from that date. He had actually issued the notice on 7-11-2005 and it was also received by the accused on 11-11-2005, i.e., within 30 days from 20th October, 2005. As such that notice was issued within prescribed period of limitation under clause (b) of proviso to Section 138. The learned Magistrate committed factual mistake in noting down in the impugned order that the notice was issued on 3-12-2005. Infact, neither in the complaint nor in the verification statement of the complainant, there was any reference to date 3-12-2005. In view of this, it is clear that the learned Magistrate committed error in holding that the notice was not issued within the stipulated period. On this ground itself, order passed by the Magistrate is liable to be set aside.

6. Proviso (c) to Section 138 provides that nothing contained in this section shall apply unless- the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Thus, law permits 15 days time from the date of receipt of the notice for payment. If he does not make payment within 15 days after receipt of the notice, cause of action arises to file complaint under Section 138 of

the Negotiable Instruments Act. Clause (b) to Section 142 provides that no court shall take cognizance of any offence punishable under section 138 except when the complaint is made within one month of the date on which cause-of-action arises under clause (c) of the proviso to Section 138. If clause (c) to Section 138 is read alongwith clause (b) of Section 142, it becomes clear that the drawer of the cheque gets 15 days time to make the payment after receipt of the notice and if he fails to make the payment within a period of 15 days, the cause-of-action arises for filing the complaint and the complaint can be filed within one month from the date when the cause-of-action arises. In the present case, admittedly the notice was received by the accused on 11-11-2005. Therefore, he had 15 days time to make payment. Thus, he could make payment by 26-11-2005 and on his failure to make the payment upto that date, cause-of-action would arise for lodging the complaint and therefore, the complaint could be lodged within one month from 26-11-2005. Thus, the last date for filing the complaint would be 26-12-2005. However, while dismissing the revision application, the learned Additional Sessions Judge, Karad noted that mandatory notice was received by the accused on 11-11-2005 and the limitation was till 11-12-2005 to file the complaint and as the complaint was filed on 15-12-2005, it was barred by the limitation. It indicates that the learned Additional Sessions Judge failed to take a note

of clause (c) to Section 138. He counted the period of limitation of one month from the date of service of the notice. However, infact period of limitation began to run only after expiry of 15 days from the date of receipt of the notice. Thus, the learned Additional Sessions Judge also committed error in coming to a conclusion that the complaint was barred by the limitation.

7. In view of the legal position stated above, it is clear that both the Courts below committed error in holding that the complaint was barred by the period of limitation. Therefore, it is a fit case to quash the orders passed by the Courts below.

8. In the result, Writ Petition is allowed. The impugned order passed by the Courts below are hereby set aside. The complaint is restored to the file of the J.M.F.C., Karad. The learned Magistrate shall issue process to the accused/respondent. The learned counsel for the respondent no.2/accused makes a statement that the accused shall appear before the trial Court on the date fixed by this Court and he will

waive service of process. With consent, the parties shall appear before the trial Court on 25th July, 2007.

9. Rule made absolute accordingly.

[J.H.BHATIA, J.]